Google Inc. et al v. Egger et al Doc. 577

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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

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| IN RE NATIONAL SECURITY AGENCY TELECOMMUNICATIONS RECORDS LITIGATION<br><br>This Document Solely Relates To:<br><br>*Al-Haramain Islamic Foundation* *et* *al*. *v. Obama*, *et* *al*. (07-CV-109-VRW) | No. M:06-CV-01791-VRW<br><br>**DECLARATION OF JOSEPH J. BRAND, NATIONAL SECURITY AGENCY, RE: GOVERNMENT DEFENDANTS' REPORT ON DECLASSIFICATION REVIEW**<br><br>Honorable Vaughn R. Walker |

I, Joseph J. Brand, declare as follows:

1. I am the Associate Director, Community Integration, Policy and Records for the National Security Agency ("NSA" or the "Agency"). I have been employed with NSA since 2000. Prior to my NSA employment, I served as a Military Intelligence Officer in the U.S. Army for almost 29 years. Prior to my current position at NSA, I held various senior and supervisory positions, including Deputy Chief of Staff for Operations and Support for the NSA Signals Intelligence Directorate, where I supported signals intelligence (SIGINT) operations of

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NSA. While the Deputy Chief of Staff for Operations and Support for the SIGINT Directorate, I was responsible, in addition to other duties, for protecting NSA SIGINT activities, sources and methods against unauthorized disclosures. As the Associate Director, Community Integration, Policy and Records, I am a TOP SECRET original classification authority, pursuant to Section 1.3 of Executive Order 12,958, as amended. *See* Executive Order ("E.O.") 12,958, 60 Fed. Reg. 19,825 (Apr. 17, 1995), as amended by E. O. 13,292, 68 Fed. Reg. 15,315 (Mar. 25, 2003). I am also responsible for the processing of requests made pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for NSA records and for asserting FOIA exemptions in the course of litigation. The statements herein are based on my personal knowledge and information made available to me in the course of my official duties.

2. I have been advised that the Court, by Order dated January 5, 2009, directed the Government to review various classified submissions in this action and determine whether they may be declassified. The purpose of this declaration is to provide an unclassified discussion of the current classification status of information described in the classified declarations of the Director of the NSA, LTG Keith B. Alexander dated June 21, 2006 and June 6, 2007.[1] In connection with the Court's Order, I undertook a current review of the classification status of those declarations and have determined that the classified declarations and NSA information they describe is currently classified in accordance with the standards set forth in Executive Order 12,958, as amended. I have executed a classified declaration, solely for the Court's *in camera, ex parte* review, which addresses these issues further.

## ORIGIN AND MISSION OF NSA

3. The NSA was established by Presidential Directive in 1952 as a separately organized agency within the Department of Defense. NSA's foreign intelligence mission includes the responsibility to collect, process, analyze, produce and disseminate SIGINT information, of which communications intelligence ("COMINT") is a significant subset, for

[1] LTG Alexander's classified declaration of June 6, 2007 was filed in the Court of Appeals when this case was then pending on appeal.

(a) national foreign intelligence purposes, (b) counterintelligence purposes, and (c) the support of military operations. *See* E. O. 12,333, Section 1.7(c), as amended.

4. There are two primary reasons for gathering and analyzing foreign intelligence information. The first, and most important, is to gain the information required to direct U.S. resources as necessary to counter threats. The second reason is to obtain the information necessary to direct the foreign policy of the United States. Foreign intelligence information provided by the NSA is thus relevant to a wide range of important issues, including military order of battle; threat warnings and readiness; arms proliferation; terrorism; and foreign aspects of international narcotics trafficking.

## DECLASSIFICATION REVIEW OF NSA CLASSIFIED SUBMISSIONS

5. In unclassified terms, LTG Alexander's classified declarations include: (i) information regarding the Terrorist Surveillance Program ("TSP"); and (ii) information that would tend to confirm or deny whether the Plaintiffs in this action have been subject to surveillance under the Terrorist Surveillance Program. LTG Alexander's classified declarations describe the NSA information at issue in more detail. *See* [Public] Declaration of LTG Keith B. Alexander, Director National Security Agency (June 21, 2006) ¶ 7.

6. Based on my current review, pursuant to the standards set forth in E.O. 12,958, as amended, I have determined that LTG Alexander's classified declarations and the classified NSA information they include remain currently classified under the standards set forth in that Executive Order. *See* E.O. 12,958, Section 1.1. Under the Executive Order, information may be originally classified if the following conditions are met: (1) an original classification authority is classifying the information; (2) the information is owned by, produced by or for, or is under the control of the United States Government; (3) the information falls within one or more of the categories of information listed in section 1.4 of the Order; and (4) the original classification authority determines that the unauthorized disclosure of the information reasonably could be expected to result in damage to the national security, which includes defense against transnational terrorism, and the original classification authority is able to identify or describe the

damage. *See* E.O. 12,958, Section 1.1 (1)-(4), as amended.

7. As indicated above, I am an original classification authority for NSA information. I am unable to describe further on the public record the basis for my determination with respect to the particular information I reviewed in connection with responding to the Court's January 5 Order without disclosing the very classified information at issue. I can state on the public record that I have determined that LTG Alexander's classified declarations and the classified NSA information they contain meet the criteria for classification as set forth in Subparagraphs (c) and (g) of Section 1.4 of E. O. 12,958, as amended, which authorizes the classification of information concerning "intelligence activities (including special activities), intelligence sources or methods, or cryptology," and "vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection systems relating to national security, which includes defense against transnational terrorism." Moreover, LTG Alexander's classified declarations include information that continues to be "Sensitive Compartmented Information" ("SCI"). SCI control systems are used for information or material "concerning or derived from intelligence sources, methods, or analytical processes that requires such information to be handled within formal access control systems" established by the Director of National Intelligence ("DNI"). *See* 50 U.S.C. § 435a(f)(5) (describing SCI information). Because of the exceptional sensitivity and vulnerability of the information, these safeguards and access requirements exceed the access standards that are normally required for information of the same classification level. I have also determined that disclosure of the NSA information at issue reasonably could be expected to result in damage to the national security of the United States. The classified submissions by LTG Alexander in this case describe the harms to national security at issue in detail. The particular level of the current classification of NSA information in the Government's submissions varies, and may be either TOP SECRET, SECRET, and CONFIDENTIAL, but the overall classification of the submissions in which that information is contained remains at the

TOP SECRET level.[2]

8. Information is subject to declassification under the Executive Order if it no longer meets the standards for classification under the Order. *See* E.O. 12,958, Section 3.1(a), as amended. "Declassification" is defined in the Executive Order to mean "the authorized change in the status of information from classified information to unclassified information." *See id.* at Section 6.1(k). The classified information contained in LTG Alexander's declarations continues to meet the standards for classification under the Order because disclosure reasonably could be expected to cause harm to national security.[3]

9. As noted above, I have executed a classified declaration, solely for the Court's *in camera, ex parte* review, which addresses the foregoing matters further.

I declare under penalty of perjury that the foregoing is true and correct.

DATE: 27 Feb 2009

Joseph J. Brand
JOSEPH J. BRAND
National Security Agency

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[2] Under Section 1.2 of E.O. 12,958, as amended, information is classified "TOP SECRET" if disclosure of the information could reasonably be expected to cause exceptionally grave damage to the U.S. national security; "SECRET" if disclosure of the information could reasonably be expected to cause serious damage to national security; and "CONFIDENTIAL" if disclosure of the information could reasonably be expected to cause identifiable or describable damage to the U.S. national security.

[3] In addition, the classified NSA information at issue continues to be subject to Section 6 of the National Security Act of 1959, Public Law No. 86-36 (codified as note to 50 U.S.C. § 402) ("[n]othing in this Act or any other law . . . shall be construed to require the disclosure of the organization of any function of the National Security Agency [or] any information with respect to the activities thereof . . . .").